been a breach of a specific or general duty by the defendant and this resulted in the damage to the plaintiff. If he fails to prove this the action must fail.

It was contended by counsel for the respondent that the appellant should have pleaded inevitable accident if he maintained that the motor cycle skidded and knocked into his car. But the law on this is clear. When an accidental harm is done it is not for the doer to excuse himself by proving that the accident was inevitable and that there was no negligence on his part. It is for the person who suffers the harm to prove affirmatively that the accidental harm was due to the negligence of the other person.

Applying the law to the facts of this case, the Magistrate's finding that the appellant was 100% liable against the deceased pillion rider cannot be sustained.

The appeal was accordingly allowed. Costs to respondent.

Appeal allowed.

Solicitors: *Richard Talalla; R.K. Nathan & Co.*

PUBLIC PROSECUTOR v. MARK KODING

[O.Cr.J. (Mohamed Azmi J.) May 28, 1982]
[Kuala Lumpur – Federal Territory Criminal Trial No. 11 of 1981]

Criminal Law and Procedure – Sedition – Speech by Member of Parliament in Dewan Rakyat – Questioning policy of Government in allowing Chinese and Tamil schools to continue in Malaysia – Questioning use of Chinese and Tamil on road signboards – Advocating closure of Chinese and Tamil schools and complete restriction of use of these languages on signboards – Suggesting amendment of article 152 of Federal Constitution – Whether seditious – Sedition Act 1948, ss. 2, 3, 4(1)(b) – Federal Constitution, arts. 63 and 152.

Administrative Law – Sedition – Member of Parliament charged for sedition – Whether speech contravened Federal Constitution, art. 152(a).

Interpretation – "teaching or learning any other language" distinguished from "teaching or learning in any other language".

In this case the accused, a Member of Parliament, was charged for uttering seditious words in the course of his speech in the Dewan Rakyat an offence under the Sedition Act, 1948. In his speech the accused questioned the policy of Government in allowing Chinese and Tamil schools to continue in this country. Secondly he questioned the use of Chinese and Tamil on road signboards. He advocated the closure of Chinese and Tamil schools and the complete restriction of the use of the two languages on the signboards. Thirdly he suggested that if such closure and restriction contravened Article 152 of the Federal Constitution, then the Constitution should be amended in the interest of the people and the nation. At the end of the prosecution case the learned trial judge held that the prosecution had established a *prima facie* case and called on the accused to enter on his defence. The accused elected to remain silent and did not wish to call any witness. At this stage the learned trial judge allowed certain questions of law to be referred to the Federal Court – see [1982] 2 M.L.J. 120. The Federal Court ruled in effect that the amendments limiting a Member of Parliament's right of free speech in Parliament are valid.

Held: (1) the accused was not guilty of sedition when he advocated the closure of Tamil or Chinese schools. There is, however, nothing unlawful in allowing Chinese or Tamil schools to continue;

(2) the words used by the accused in relation to road signboards could not be said to have a seditious tendency since he did not in fact call in question the existence of any right protected under any part of Article 152 of the Federal Constitution. The accused was in fact demanding for the implementation of the national language as provided for in that Article, since road signboards were erected under the Road Traffic Ordinance for an official purpose;

(3) the accused committed a breach of paragraph (b) of section 3(1) of the Sedition Act, 1948, by demanding an amendment to the Constitution and the repeal or amendment of Article 152 of the Constitution;

(4) in the circumstances the public interest would be sufficiently served if the accused is put on a bond for two years in the sum of $2,000 to be of good behaviour.

Cases referred to:

(1) *Public Prosecutor* v. *Ooi Kee Saik & Ors.* [1971] 2 M.L.J. 108, 111.
(2) *Melan bin Abdullah & Anor.* v. *Public Prosecutor* [1971] 2 M.L.J. 280, 282.
(3) *Merdeka University Bhd.* v. *Government of Malaysia* [1981] 2 M.L.J. 356.

[The following cases were also referred to in argument: *Queen Empress* v. *Balgangadhar Tilak and Keshav Mahadev* I.L.R. (1897) Vol. XXII Bombay 112; *Public Prosecutor* v. *Oh Keng Seng* [1977] 2 M.L.J. 206; *Maniben Liladhar Kara* v. *Emperor* A.I.R. 1933 Bombay 65; *Fan Yew Teng* v. *Public Prosecutor* [1971] 2 M.L.J. 271; *Haw Tua Tau* v. *Public Prosecutor* [1981] 3 W.L.R. 395; [1981] 2 M.L.J. 49; *Loh Kooi Choon* v. *Government of Malaysia* [1977] 2 M.L.J. 187; *Phang Chin Hock* v. *Public Prosecutor* [1980] 1 M.L.J. 70; *Kesavananda* v. *Kerala* [1973] S.C.R. Supp. 1; *East Union (Malaya) Sdn. Bhd.* v. *Government of State of Johore & Anor.* [1980] 2 M.L.J. 143; *Anand Reddi* v. *St. of Andhra Pradesh* A.I.R. 1959 Andhra Pradesh 144; *B. Surinder Singh Kanda* v. *The Government of the Federation of Malaya* [1962] M.L.J. 169.]

CRIMINAL TRIAL.

Mohamed Shafee bin Abdullah (Deputy Public

Prosecutor) for the Public Prosecutor.

Marina Yusoff (*Wong Swee Min* with her) for the accused.

Cur. Adv. Vult.

Mohamed Azmi J.: The Accused, a Member of Parliament, is charged for uttering seditious words, an offence punishable under section 4(1)(b) of the Sedition Act 1948 (Revised 1969). He is alleged to have uttered the seditious words in the course of his speech in Malay in Dewan Rakyat on October 11, 1978. The impugned words as contained in Appendix "A" of the charge are as follows:

"Keadaan eksklusif dalam negara kita di masa ini adalah hasil daripada baik hati kaum bumiputra membiarkan sekolah-sekolah China dan India menggunakan bahasa mereka selepas Merdeka. Sekiranya tokoh-tokoh kita yang awal dapat meramalkan keadaan yang berlaku pada masa ini dan tidak bertolak ansur untuk menghapuskan pelajaran China dan Tamil sudah tentu kita tidak akan menghadapi masalah yang kita hadapi sekarang ini. Bagaimanapun, masih ada lagi masa untuk kita membaiki keadaan ini. Tindakan kita bukanlah mencerminkan tujuan dan kepercayaan tokoh-tokoh kita yang lalu oleh sebab mereka telah bertindak berdasarkan kepada keadaan yang wujud pada masa itu dan mereka dengan ikhlas mempercayai bahawa mereka telah dapat menyelesaikan issu tersebut. Mereka tidak dapat disalahkan dengan apa yang terjadi pada hari ini oleh sebab cabaran-cabaran yang kita terima hari ini bukanlah datang dari zaman mereka. Cabaran yang kita hadapi sekarang adalah tanggungjawab kita untuk mengatasinya.

Tuan Yang di-Pertua, masanya sudah tiba bagi Dewan yang mulia ini untuk memutuskan samada kita akan terus membenarkan sekolah-sekolah China dan Tamil dan bahasa-bahasa tersebut di papan-papan tanda di jalan-jalan raya di negeri itu. Saya, seratus peratus berpendapat bahawa kita harus menutup sekolah-sekolah jenis tersebut dan menyekat sama sekali penulisan papan-papan tanda dalam bahasa-bahasa itu. Sekiranya tindakan-tindakan ini kelak bertentangan dengan Artikal 152 Perlembagaan maka kita harus merombak Perlembagaan tersebut demi kepentingan rakyat dan negara. Kalau kita gagal melakukan hakikat ini bermakna kita menghampakan amanah yang diamanatkan oleh rakyat dan juga melenyapkan harapan dan aspirasi generasi baru kita yang tidak mahu melihat negara mereka dicap oleh identiti orang asing. Adakah kita mahu mengwujudkan identiti kita atas asas kemelayuan, kechinaan atau keindiaan. Saya rasa sudah pasti kemelayuan atau kebumiputeraan kerana tidak ada alternatif yang lain demi survival negara kita." (See Exhibit C7 for English translation).

At the commencement of this trial, counsel for the Accused had applied under sections 48 and 49 of the Courts of Judicature Act No. 7 of 1964 (Revised 1972) Act 91, for the proceedings to be stayed and for the court to refer to the Federal Court certain questions as to the effect of the Federal Constitution in the form of a Special Case. In exercise of my discretion under section 48(2), I held that the proper stage for stay would be after the whole evidence had been given, so that the Federal Court would be in a better position to decide the questions to be referred, and it would also avoid wastage of judicial time which had been set aside for this trial. The Special Case has now been referred to the Federal Court, and after dealing with two of the three questions referred, the Federal Court has remitted the case to me for continuation and disposal in accordance with its judgment and otherwise according to law. (See Federal Court Criminal Reference No. 3 of 1982).

The facts in this case are not seriously in dispute. Mr. Chan Teck Chan (PW1), also a Member of Parliament, testified to the effect that on October 11, 1978 whilst attending the afternoon session of Dewan Rakyat, he heard the Accused making a speech as reported at pages 223 to 238 of Malaysian Hansard entitled "Parliamentary Debates of Dewan Rakyat" Volume 1 No. 3 for Wednesday October 11, 1978 (see Exhibit P3). The Accused was interrupted by Mr. K. Pathmanaban – the then Deputy Minister for Labour, who objected to the seditious nature of the speech. This is reported at page 230 of Exhibit P3. After the speech was over, Mr. Chan discussed it with his colleagues, and eventually on November 7, 1978, he lodged a police report (Exhibit P4). Encik Yahya bin Manap (PW2) confirmed that the Accused did make the speech as reported from pages 223 to 238 in Exhibit P3. He is the Chief Editor of the Malaysian Hansard and he explained how speeches in Parliament are recorded verbatim, checked (including checking by the respective speakers) and finally published. In this instance, a typewritten copy of Accused's speech made on October 11, 1978, was sent to him on the following day. The Accused confirmed the speech (Exhibit P5A) vide covering memo (Exhibit P5). The investigating officer, ASP Abu Zahar bin Ujung (PW8) who has since retired from the Police Force, gave formal evidence regarding the police report lodged by Mr. Chan. In the course of investigation, he took possession from Encik Yahya Exhibit P5 and P5A together with two tapes containing Accused's speech (Exhibit P6A and P6B). He handed all these exhibits for safe keeping to Inspector Abdul Manan (PW4) who produced them in court. Apart from these four witnesses, the Prosecution – after closing their case – offered to the Defence 20 witnesses including Datuk Pathmanaban.

To establish a case under section 4(1)(b) of the Sedition Act 1948, the Prosecution must prove that the Accused did utter the impugned words, and that the impugned words are "seditious" as

defined by sections 2 and 3 of the Act. On the first ingredient, there is ample evidence to prove that the Accused did make a speech in Dewan Rakyat which contained the impugned words. There is the evidence of Mr. Chan Teck Chan, and as required by section 6(1), his testimony is corroborated by Encik Yahya (PW2) and as well as by the Malaysian Hansard (Exhibit P3), and a copy of the speech as confirmed by the Accused (Exhibit P5A). On the evidence, I find the Prosecution have proved beyond reasonable doubt that the Accused did utter the impugned words as contained in Appendix "A" of the charge. On the second ingredient, for the impugned words to be seditious, the Prosecution must prove that they have a "seditious tendency" as defined by section 3(1) of the Sedition Act. Under this subsection there are six situations in which "words" (which is statutorily defined to include any phrase, sentence or other consecutive number or combination of words oral or written) will have a seditious tendency. In this case, although the Prosecution are relying on three of them – viz. paragraphs (d), (e) and (f) of section 3(1) – from the Deputy Public Prosecutor's submission, they are in fact relying heavily on paragraph (f). Under paragraph (d), words which have a tendency to raise discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong or of the Ruler of any State or amongst the inhabitants of Malaysia or of any State, are seditious under the Act. Under paragraph (e), so are words with a tendency to promote feelings of ill-will and hostility between different races or classes of the population of Malaysia. Under paragraph (f), which is most relevant in this case, words which have a tendency to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provision of Part III of the Federal Constitution or Articles 152, 153 or 181 of the Federal Constitution are also seditious.

In this case, it is the contention of learned Defence Counsel that the two passages of Accused's speech, as contained in Appendix "A", are not seditious on the ground that there is no evidence of violence or adverse reaction to the speech. Under cross-examination, Mr. Chan, the complainant, admitted that he was not enraged by the speech, but he felt hurt. It seems to be suggested that the Prosecution must lead evidence to prove that there was actual violence or adverse reaction to the speech before they can become seditious. It is also the contention of Defence Counsel that without any explanation given by Mr. Chan or Datuk Pathmanaban as to why they thought the speech was seditious, the Prosecution cannot be said to have proved their case. It is further contended that under section 6(1) of the Act, Mr. Chan's opinion that the speech was seditious must be corroborated, and since Datuk Pathmanaban does not testify, the Accused should not be found guilty. In my view, for the Prosecution to succeed in this case, there is no necessity to prove that the Accused's speech has caused actual violence or actual adverse reaction. The Prosecution need only prove under the second ingredient that the words uttered by the Accused have one or more of the six tendencies enumerated in section 3(1) to render the words uttered as having a seditious tendency. Thus, all the Prosecution need to prove is that the Accused has made a speech or uttered words which qualify the speech or words as one having a seditious tendency. In this case, it is sufficient if the words or speech impugned have a tendency to raise discontent or disaffection amongst the inhabitants of Malaysia; or a tendency to promote feelings of ill-will and hostility between the different races in Malaysia; or a tendency to question any matter, right, status or position established or protected by the provision of Article 152 of the Federal Constitution. Thus, in *Public Prosecutor* v. *Ooi Kee Saik & Ors.*[1], Raja Azlan Shah J. (as he then was) has this to say on the matter:

> "In my view what the prosecution have to prove and all that the prosecution have to prove is that the words complained of, or words equivalent in substance to those words, were spoken by accused No. 1 at the dinner party. Once that is proved the accused will be conclusively presumed to have intended the natural consequences of his verbal acts, and it is therefore sufficient if his words have a tendency to produce any of the consequences stated in section 3(1) of the Act. It is immaterial whether or not the words complained of could have the effect of producing or did in fact produce any of the consequences enumerated in the section. It is also immaterial whether the impugned words were true or false. (See *Queen Empress* v. *Ambra Prasad*). And it is not open to the accused to say that he did not intend his words to bear the meaning which they naturally bear (See *Maniben* v. *Emperor*)."

As regards the responsibility of deciding whether the words are seditious, Raja Azlan Shah J. said this at page 112:

> "A line must therefore be drawn between the right to freedom of speech and sedition. In this country the court draws the line. The question arises: where is the line to be drawn; when does free political criticism end and sedition begin? In my view, the right to free speech ceases at the point where it comes within the mischief of section 3 of the Sedition Act. The dividing line between lawful criticism of Government and sedition is this – if upon reading the impugned speech as a whole the court finds that it was intended to be a criticism of Government policy or administration with a view to obtain its change or reform, the speech is safe. But

if the court comes to the conclusion that the speech used naturally, clearly and indubitably, has the tendency of stirring up hatred, contempt or disaffection against the Government, then it is caught within the ban of paragraph (a) of section 3(1) of the Act. In other contexts the word "disaffection" might have a different meaning, but in the context of the Sedition Act it means more than political criticism; it means the absence of affection, disloyalty, enmity and hostility."

Although His Lordship was dealing with "seditious tendency" under paragraph (a) of section 3(1), it is clear law that, the opinion of Mr. Chan or Datuk Pathmanaban is irrelevant in determining whether the impugned words are seditious. It is for the court to decide and, as such, the question of corroboration does not arise. In my view, section 6(1) of the Sedition Act which provides that no person shall be convicted of an offence under section 4 on the uncorroborated testimony of one witness, refers to the *actus reus*. Thus, in the present case, the fact that the Accused made the impugned speech must be corroborated, but no corroboration is required on the *mens rea*, since the intention of the Accused is immaterial by virtue of subsection 3(3) of the Act. Thus, it is immaterial whether the Accused's intention or motive was honourable or evil when making the speech.

The test provided in *Ooi Kee Saik* case (*ante*) between lawful criticism of Government and sedition, is relevant in this case in considering whether the impugned two paragraphs in Appendix "A" have a seditious tendency under paragraphs (d) and (e) of section 3(1). As mentioned earlier, it should be noted that the Prosecution in this case are relying more on seditious tendency under paragraph (f) of section 3(1). It is their contention that the impugned speech amounts to a demand for the closure of Chinese or Tamil schools, and the abolition of the use of the two languages on signboards which they say are protected by proviso (a) to Article 152 of the Federal Constitution. Under proviso (a) of Article 152, "no person shall be prohibited or prevented from using (otherwise than for official purposes), or from teaching or learning, any other language". Although section 3(2) provides that under certain circumstances a speech or words shall not be deemed to be seditious if they in fact have no seditious tendency, paragraph (f) of section 3(1) has specifically been excluded from the deeming provision by section 3(2)(b) as regards a tendency to point out errors or defects in any Government or Constitution, and also by section 3(2)(c) as regards a tendency (1) to persuade the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure by lawful means the alteration of any matter in the territory of the Ruler or governed by the Government as by law established; or (2) to point out, with a view of their removal, any matters producing or having a tendency to produce feelings or ill-will and enmity between different races or classes of the population of the Federation. Thus, Ong C.J. in *Melan bin Abdullah & Anor.* v. *Public Prosecutor*[2] held that, as regards section 3 of the Sedition Act, "the most significant effect of the 1970 amendment lies in paragraph (f) of subsection (1), whereby the definition of a "seditious tendency" includes questioning any of the provisions and articles in the Federal Constitution therein specified. The ban on such questions is made absolute by paragraph (c) of subsection (2)". Referring to the same subject-matter as sensitive issues, Raja Azlan J. (as he then was) had this to say in *Public Prosecutor* v. *Ooi Kee Saik & Ors.* (*ante*) at page 112, "If the natural consequences of the impugned speech is apt to produce conflict and discord amongst the people or to create race hatred, the speech transgresses paragraphs (d) and (e) of section 3(1). Again paragraph (f) of section 3(1) comes into play if the impugned speech has reference to question any of the four sensitive issues – citizenship, national language, special rights of the Malays and the sovereignty of the Rulers".

From the judgment of the Federal Court in the Reference pertaining to this case, it was held that whether or not the Accused's speech as contained in Appendix 'X' was seditious within the Act will depend, firstly, on a reading of particular parts of it, secondly, on a reading of it as a whole, and, thirdly, on consideration of the context in which it was made. Reading the two passages of Accused's speech, particularly the second passage, it is my finding the Accused is in fact questioning, firstly, the policy of Government in allowing Chinese and Tamil schools to continue in this country. Secondly, he questions the use of Chinese and Tamil on road signboards. He advocates the closure of these schools and restrict completely the use of the two languages on the signboards. Thirdly, he goes one step further by suggesting that if such closure and restriction contravene Article 152, then the Constitution should be amended in the interest of the people and the nation. Having regard to the judgment of Ong C.J. in *Melan b. Abdullah* (*ante*) and that of Abdoolcader J. in *Merdeka University Bhd.* v. *Government of Malaysia*[3], the true extent of the protection given by proviso (a) to Article 152 with reference to "teaching or learning any other language" is not as simple as I thought. Ong C.J. gave a very liberal protection when he said at page 283:

"It has been contended that abolition of schools is not quite the same thing as preventing the "teaching or learning" of any language taught in those schools. This argument, in my opinion, is pure sophistry for it cannot be said that the abolition of Tamil or Chinese medium schools does not do away with the very source in which knowledge of those languages is imbibed. The meaning ordinarily conveyed by the words "Abolish Tamil or Chinese medium schools in this country" is clear and unambiguous. They call in question the teaching of Tamil or Chinese."

On the other hand, Abdoolcader J. appears to have given a more restricted protection conferred by the proviso when he said at page 362 last paragraph:

"It is further significant that proviso (a) speaks of 'teaching or learning' and omits the preposition 'in' thereafter. It is quite clear that MU proposes to give instruction in its courses in Chinese, whether as the only or the main medium of instruction, whichever it is and the proviso accordingly affords no protection for that purpose. The omission of the preposition cannot be repaired in view of the express language of the proviso and no interpretation by analogy in this regard can be resorted to either. Words in a statute must be taken to be used correctly and exactly and the onus on those who assert that they are used loosely or inexactly is a heavy one (*New Plymouth Borough Council* v. *Taranaki Electric-Power Board* (at page 682). It was laid down by the Privy Council in *Ram Chunder Dutt* v. *Jughesh Chunder Dutt* that 'arguments from analogy may arise where a principle of law is involved; but where the courts are dealing with the positive enactments of a statute, reasons founded upon analogies are scarcely applicable'".

The question therefore arises as to the true interpretation of proviso (a) to Article 152(1). Having regard to the words used in the proviso, viz. "teaching or learning any other language" as opposed to "teaching or learning *in* any other language", I tend to agree with the restricted meaning as enunciated by Abdoolcader J. when dealing with schools or other educational institutions. In my view, under proviso (a), although the National Language shall be the Malay language, the *usage* of any other language other than for official purposes, is guaranteed; so is the *teaching or learning* of any other language in schools, be it Chinese, Tamil, Arabic or English. But there is nothing in proviso (a) to justify the extension of the protection to the operation of schools where the medium of instruction is Chinese, Tamil, Arabic or English. This strict interpretation is consistent with proviso (b) which guarantees the right of the Federal Government or any State Government to preserve and sustain the *use* and *study* of the language of any other community in the Federation. Thus, the preservation and sustenance of *usage* of language of any other community is guaranteed. So is the preservation and sustenance of study of any other community's language, but again there is no justification in extending the guarantee to the preservation and sustenance of study *in* the language of any other community in the absence of specific words to that effect. Any other interpretation of proviso (a) would result in abusing the words used in the proviso. It is absurd for instance to think that the proviso gives constitutional protection to teaching or learning in school where the medium of instruction is Russian or Japanese. To my mind, the protection only extends to language but not to medium of instruction in schools. In other words, no person shall be prohibited or prevented from teaching or learning Chinese or Tamil or, for that matter, any language which is not the national language in any school as a language subject, but such protection does not extend to the teaching or learning in a school where the teaching or learning is *in* any other language. As correctly stated by Abdoolcader J., the omission of the preposition "in" after the words "teaching or learning" in proviso (a) makes the distinction necessary. In the event, it is my finding that the Accused is not guilty of sedition when he advocates for the closure of Tamil or Chinese schools. Whether or not such closure is advisable or feasible is, of course, another matter to be decided elsewhere and not in this court. There is nothing unlawful in allowing Chinese or Tamil schools to continue.

As regards the use of signboards in Chinese and Tamil, I am satisfied from the speech that the Accused was referring to road signboards. Such signboards are erected under the Road Traffic Ordinance and therefore they are erected for official purpose. In the event, this particular part of the impugned speech is not protected under proviso (a) which provides that no person shall be prohibited or prevented from using any other language otherwise than for official purpose. The words used by the Accused cannot therefore be said to have seditious tendency since he does not in fact call in question the existence of any right protected by any part of Article 152. In the context of the two paragraphs of his speech in Appendix 'X', he was in fact demanding for the implementation of the national language as provided for in that Article. But, on the third part of his speech in Appendix 'X', the Accused has, to my mind, committed a breach of paragraph (f) of section 3(1) by demanding the amendment of the Constitution if his demand for abolition or closure of Chinese and Tamil schools, and for discontinuance of the use of such languages on road signboards contravened Article 152. By so doing, he has questioned the provision of Article 152 by demanding for its repeal or amendment should it prove necessary. To my mind, it makes no difference if

such repeal or amendment turned out to be unnecessary. The ban on questioning the existence of Articles 152, 153 or 181 of the Federal Constitution is made absolute by paragraph (c) of section 3(2) of the Sedition Act. As stated by the Federal Court at page 10: "But at the same time Ordinance 45 also amended section 3(2) of the Sedition Act, the effect of which is to allow a person to question the implementation of Article 152, as opposed to questioning the existence of the rights guaranteed by it". To my mind, by suggesting that Article 152 should be amended, the Accused is technically guilty of sedition punishable under section 4(1)(b) of the Act. It is my view that advocating for the implementation of the national language within the ambit of Article 152 cannot in any case constitute seditious tendency, unless by such advocacy a person uses such fiery language which is apt to produce conflict and discord amongst the people or to create race hatred, in which event, the speech transgresses paragraphs (d) and (e) of section 3(1). After considering the impugned speech sentence by sentence, and reading the speech as a whole and having considered the context in which it was made, I find the Accused has not contravened paragraph (d) or (e), although he transgressed paragraph (f) by questioning the existence of Article 152 and advocating for its amendment should it be found necessary.

In the circumstances, I find the Prosecution have established a *prima facie* case and call the Accused to enter his Defence. The Accused elects to remain silent and does not wish to call any witness. In such circumstance, the court would have no alternative but to find the Accused guilty of the charge. But as stated earlier, the Accused had applied for stay of proceedings at the commencement of trial vide High Court Criminal Application No. 2/1982 for certain constitutional issues to be referred to the Federal Court. Since the Accused is a Member of Parliament, and the impugned speech was made in Dewan Rakyat, and certain questions had arisen as to the effect of Articles 63 and 152 of the Federal Constitution, I was of the view that this was the proper stage when an order staying the proceedings should be allowed. In exercise of my discretion, I had allowed the following three questions to be referred to the Federal Court under section 48(1) of Courts of Judicature Act 1964 (Revised 1972) and under Rule 33 of the Rules of the Federal Court 1980:

(1) As a Member of Parliament, has the Accused's right of free speech in Parliament given (a) by sections 3 and 8 of the Houses of Parliament (Privileges and Powers) Ordinance 1952 and (b) by Article 63(2) of the 1957 Federal Constitution been validly limited by the subsequent constitutional amendment with the addition of Clause (4) to Article 63 by Act A30?

(2) As a Member of Parliament, is the Accused's right of free speech in Parliament given by Article 63(2) of the Constitution either (a) part of the basic structure of the Constitution or (b) a fundamental rule of natural justice, so that any purported amendment of the Constitution seeking to limit such right is void and of no effect?

(3) Having regard to the position of Malay language as the national language under Article 152 Clause (1) of the Federal Constitution and questioning it would bring into operation section 3(1)(f) of the Sedition Act 1948 (Revised 1969), can the demand for closure of Chinese and Tamil schools in the process of implementing the national language be legally and constitutionally treated as questioning the provision of proviso (a) of Article 152(1), notwithstanding that there is no demand for the abolition or prohibition of the teaching or learning of such language?

The Federal Court has by its judgment delivered on April 17, 1982, answered the first and second questions in the affirmative. The ruling of the Federal Court on the first question is that the Accused's right of free speech in Parliament has been validly limited by the amendment effected by the new Clause (4) of Article 63 added by Constitution (Amendment) Act 1971 (Act A30). On the second question, it ruled that the amendments do not affect the basic structure of the Constitution and the Accused's right of free speech in Parliament given by Article 63(2) of the Constitution is not part of the fundamental rule of natural justice. In short, it is the ruling of the Federal Court that the amendments limiting a Member of Parliament's right of free speech in Parliament are valid. Since I have more or less answered the third question, I do not wish to say anything more in the matter. The answer is in the negative, subject to what I have said earlier.

On resumption of hearing, learned Defence Counsel has applied for the case to be reopened to enable the Accused to call three witnesses for the production of certain documents and a book entitled "Malay Dilemma". After hearing objection by the Deputy Public Prosecutor, I agree that the application should be dismissed. The calling of fresh evidence, after the Defence has closed, should not be entertained unless such evidence was not available earlier and that the fresh evidence is of such nature that it is credible and material to the case. Defence Counsel has failed to show how the words used in other documents by other people can help the court to determine whether the

impugned speech in this case is seditious. The application is accordingly dismissed.

After considering Defence final submission, I find the Accused has failed to raise any reasonable doubt in the Prosecution case. I therefore find the Accused guilty of the charge.

On sentence, I have given anxious consideration to the various extenuating circumstances found in this case. Although sedition is a serious offence, I take into consideration that the Accused is a first offender, and the type of sedition committed is a technical one under paragraph (f) of section 3(1). Further, there are extenuating circumstances in this case which are in Accused's favour. Although the Accused is a lawyer and a Member of Parliament who should be presumed to know the law, it is clear from the *Malaysian Hansards* that when the Accused made the impugned speech, even the Speaker, from his interjection when Mr. Pathmanaban took objection, was understandably unsure whether to stop or allow the Accused to continue with his speech. The law of sedition in this country is difficult to understand due to its artificial nature, and until recently even a Member of Parliament could not be expected to know why his freedom of speech has been validly limited although sections 3 and 8 of the Houses of Parliament (Privileges and Powers) Ordinance 1952 have not been expressly repealed. Secondly, this offence was committed in 1978 and the Accused was only charged in 1981 after the Deputy Public Prosecutor had given his consent to prosecute some 2 years and 9 months after a police report was lodged by the complainant. Thirdly, this is the first case in this country that a Member of Parliament has been charged of committing the offence while discharging his duty in Parliament. Fourthly, the impugned speech was Accused's maiden speech in Parliament. In my view, the fact that the Accused has been found guilty in this case, is sufficient deterrent for him and other Members of Parliament to be more careful in future when giving speeches in Parliament, particularly when dealing with sensitive issues. To my mind, public interest would be sufficiently served if the Accused is put on a Bond for two years in the sum of $2,000 in one surety to be of good behaviour under section 173A Criminal Procedure Code without recording a conviction. I therefore impose the sentence which I think is fair and adequate having regard to all the circumstances of the case. However, this sentence should not form a precedent for future cases involving Members of Parliament who are found guilty of similar offences.

Order accordingly.

Solicitors: *Marina Yusoff & Co.*

TAN BOON BAK & SONS LTD. v. GOVERNMENT OF THE STATE OF PERAK & ANOR.

[O.C.J. (Ajaib Singh J.) July 20, 1982]
[Ipoh – Civil Suit No. 368 of 1981]

Land Acquisition – Delay in payment – Whether null and void – Whether land acquired for bona fide purpose – Federal Constitution, art. 13 – Land Acquisition Act 1960, ss. 3, 4, 22, 29(1) & 68.

The plaintiffs in this case sued the State Government and the Collector of Land Revenue in respect of acquisition proceedings over their land of about 22,000 sq. ft. with two single storey detached houses along Lorong Anderson. The plaintiffs sought for a declaration that the acquisition proceedings were null and void and of no effect on two grounds: (1) that the acquisition of the land was not *bona fide* for a public purpose and (2) that the unreasonable delay on the part of the Collector in making the payment for the compensation awarded by him contravened section 29(1) of the Land Acquisition Act 1960 and art. 13 of the Federal Constitution.

The facts revealed that the Collector made an award of $85,841 as compensation for the plaintiffs' land. The formal notice of the award and offer of compensation was duly served on the plaintiffs on March 22, 1974. They signed a written acceptance of the compensation on March 29, 1974 with a request that the award be sent to them by cheque. By a letter dated May 23, 1981 the Collector requested the plaintiffs to call at his office to collect the sum of $85,841 and by notice dated May 27, 1981 he took formal possession of the land under section 22 of the Land Acquisition Act, 1960. This notice was served on the plaintiffs on July 16, 1981 and from that date the ownership of the land was as good as passed to the State Authority. The formality of making a memorial on the register document of title that the land has been acquired and has vested in the State Authority was all that remained to be done. The plaintiffs refused to accept the money.

Held, dismissing the plaintiffs' claim: (1) there was no evidence whatsoever that the defendants had not acted in good faith in the matter, the project was for a public purpose as well as for a commercial purpose within the meaning of section 3(a) & (c) of the Land Acquisition Act, 1960;

(2) in all the circumstances of the case the delay did not render the acquisition proceedings null and void;

(3) until the Collector takes possession of the land under section 22 of the Land Acquisition Act the land does not vest in the State Authority but remains the property of the land owner. In the present case the plaintiffs did in fact receive rents from the 2 houses and were still receiving them although their right thereto had been extinguished;